

REMARKS

Claims 1, 2, 14, 15, 17-20, 22-26, 28, 30, and 32 are canceled herein without prejudice or disclaimer. Claims 4-7, 10, 12, and 13 have been amended. Claims 3-13, 16, 21, 27, 29, 31, and 33 will be pending upon entry of these amendments.

The claim amendments correct the recitation of certain base claims as necessitated by the claim cancellations listed above. No new matter has been introduced.

The claims have been rejected for alleged anticipation and double patenting. The rejections are respectfully traversed, and their reconsideration is requested in view of the amendments and the arguments presented below.

Objection to the Drawings

Figs. 1-3 are objected to because the details of the gels allegedly cannot be seen. Replacement drawings for Figs. 1-3 are filed herewith. The replacement drawings show good resolution of the gels, and thus the objection is overcome.

Objection to the Claims

Claims 5 and 6 are objected to as allegedly being in improper multiple dependent form. Due to the cancellation of some of the previous base claims of claims 5 and 6, these claims

Application No. 10/538,532
Filed: March 24, 2006
TC Art Unit: 1636
Confirmation No.: 4253

AMENDMENTS TO THE DRAWINGS

Please replace Figs. 1-3 with the three attached Replacement Sheets containing Figs. 1-3. The new drawings are identical in content to the original drawings. Only the contrast and resolution of the images has been improved. No new matter has been added.

are no longer multiple dependent claims, and the objection is moot.

Double Patenting

Claims 1-4, 10-15, and 26-33 are provisionally rejected for alleged obviousness-type double patenting over claims 1-13 of co-pending application No. 10/511,496 in view of the Mirzabekov patent. Applicant submits that co-pending application No. 10/511,496 is abandoned. According to PAIR, a Notice of Abandonment was issued for that case on April 15, 2008, which renders the present rejection moot.

Rejections Under 35 U.S.C. 102

Claims 1, 2, 4, 7, 8, 10-14, 16, 17, 19, 26, 28, 30, and 32 are rejected as allegedly anticipated under 35 U.S.C. 102(b) by Welling.

The subject matter of the rejected claims has been canceled. Therefore, the rejection has been rendered moot. Applicant submits that the presently pending claims are not anticipated by Welling at least because Welling fails to teach or suggest the step of "correlating said composition to a previously compiled reference data file of a plurality of compositions obtained through exposure of said microbial

population to a plurality of environmental conditions" as recited by claim 3.

Claims 1, 2, 4, 7-14, 16, 17, 19, 21, 22, 24, 26, 28, 30, and 32 are rejected as allegedly anticipated under 35 U.S.C. 102(b) by Rudi.

The subject matter of the rejected claims has been canceled. Therefore, the rejection has been rendered moot. Applicant submits that the presently pending claims are not anticipated by Rudi at least because Rudi fails to teach or suggest the step of "correlating said composition to a previously compiled reference data file of a plurality of compositions obtained through exposure of said microbial population to a plurality of environmental conditions" as recited by claim 3.

Claims 1, 4, 7-13, 16, and 21 are rejected as allegedly anticipated under 35 U.S.C. 102(e) by Mirzabekov.

The subject matter of the rejected claims has been canceled. Therefore, the rejection has been rendered moot. Applicant submits that the presently pending claims are not anticipated by Mirzabekov at least because Mirzabekov fails to teach or suggest the step of "correlating said composition to a previously compiled reference data file of a plurality of compositions obtained through exposure of said microbial

population to a plurality of environmental conditions" as recited by claim 3.

Claims 1-4 and 7-33 are rejected as allegedly anticipated under 35 U.S.C. 102(e) by Ashby.

Ashby teaches the analysis of naturally occurring microbial populations under diverse environmental conditions and use of the information obtained to predict environmental conditions (e.g., the presence of oil in the ground, or the presence of pathogenic insects). However, Ashby does not analyze a fixed, controlled microbial population and measure the changes in that population caused by environmental circumstances as required by claim 3.

The present claims make use of a reference population of microbes, and take advantage of the greater sensitivity and broader applicability of the method when so practiced. For example, the specification states at page 3, lines 26-30:

By the improved method, processes can be controlled on the basis of the changes in a composition of a microbial population which may or may not be already present in a process or in a (process) environment, or is introduced therein with the purpose of determining an environmental condition by means of a method according to the present invention.

Thus, the method of the present claims utilizes the same microbial population to compile reference data on various

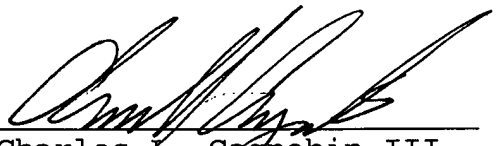
environmental conditions and to test an unknown environmental condition by comparison to the reference data. The method of Ashby is distinguished at least because Ashby merely characterizes an existing microbial population as found in the unknown environmental condition. In contrast, the claimed method tests the same population of microbes in different environments and also can look at changes in microbial species that may not be found in the environment under investigation. This is neither taught nor suggested by Ashby. Therefore, Ashby fails to anticipate the present claims.

Application No. 10/538,532
Filed: March 24, 2006
TC Art Unit: 1636
Confirmation No.: 4253

The Examiner is encouraged to telephone the undersigned attorney to discuss any matter which would expedite allowance of the present application.

Respectfully submitted,

JOSEPHUS MAURITIUS BERNARDUS
MARIA van der VOSSEN ET AL.

By: 
Charles L. Gagnebin III
Registration No. 25,467
Attorney for Applicant(s)

WEINGARTEN, SCHURGIN, GAGNEBIN
& LEOVICI LLP
Ten Post Office Square
Boston, MA 02109
Telephone: (617) 542-2290
Telecopier: (617) 451-0313

CLG/LJH:mrh

368469.1